

**MINUTES OF THE  
ANNUAL MEETING OF THE  
STRUCTURAL PEST CONTROL BOARD  
OCTOBER 18 AND 19, 2001**

The meeting was held on Thursday and Friday, October 18 and 19, 2001, at the Crowne Plaza Hotel Los Angeles Airport, 5985 West Century Boulevard, Los Angeles, California, commencing at 1:35 PM with the following members constituting a quorum:

Jean Melton  
Bill Morris  
Michael Roth  
Mustapha Sesay  
Karl Thurmond  
Gregory Traum  
Ken Trongo

Board staff present:

Kelli Okuma, Registrar  
Susan Saylor, Assistant Registrar  
Dennis Patzer, Enforcement  
Karen Sanders, Staff Services Analyst

Departmental staff present:

Donald Chang, Legal Counsel

**REINSTATEMENT HEARINGS**

The Board sat with Administrative Law Judge Ralph Dash and Deputy Attorney General Sharon Cohen to hear the Petitions for Reinstatement of William Carroll Jackson, Operator's License No. 6387 and Loran D. Martin, Field Representative's License No. 20963. The petitioners were informed they would be notified by mail of the Board's decisions.

**CLOSED SESSION**

The Board adjourned to closed session to consider proposed disciplinary actions in accordance with subdivision (c)(3) of section 11126 of the Government Code.

The meeting recessed at 4:55 PM.

The meeting reconvened at 9:10 AM on Friday, October 19, 2001.

## **FLAG SALUTE**

Mr. Trongo led the meeting in the salute of the flag.

Mr. Trongo asked for a moment of silence in honor of those who suffered in the wake of the September 11, 2001, tragedy.

## **ELECTION OF OFFICERS**

Mr. Morris moved and Mr. Thurmond seconded to nominate Ken Trongo for the office of president.

There being no further nominations, nominations were closed. Mr. Trongo was unanimously elected.

Mr. Trongo moved and Mr. Traum seconded to nominate Karl Thurmond for the office of vice president. Mr. Sesay moved and Mr. Roth seconded to nominate Bill Morris for the office of vice president. Mr. Trongo moved and Ms. Melton seconded to close nominations. Passed unanimously.

Mr. Thurmond was elected vice president. (Thurmond – Melton, Thurmond, Traum, Trongo. Morris – Morris, Roth, Sesay).

## **PUBLIC HEARING TO AMEND SECTION 1991 AND ADOPT SECTIONS 1993.2 AND 1993.3 OF TITLE 16 OF THE CALIFORNIA CODE OF REGULATIONS RELATING TO CONSUMER NOTIFICATION REGARDING LIMITATIONS OF LOCAL TREATMENTS, THE USE OF TERMITE BAIT STATIONS, AND CORRECTIVE RECOMMENDATIONS FOR WOODEN DECKS, WOODEN STAIRS AND WOODEN LANDINGS**

Mr. Chang announced for the record the date was October 19, 2001, and the public hearing was being held in Los Angeles to amend to section 1991 and adopt sections 1993.2 and 1993.3 as outlined in the public notice filed with the Office of Administrative Law and mailed to all interested parties. The hearing was opened to the public to take oral testimony or documentary evidence.

Jim Steffenson, Tallon Termite & Pest Control, Inc., questioned if the board members had received copies of all comments made at public hearings during the prior eight years regarding this same subject. He was informed the board members did not receive public comments made prior to this noticed public hearing. Mr. Steffenson clarified that public

comments made prior to this public hearing were not provided to the board members, and questioned if the board members were made aware they did not have public comments made during the prior eight years. He was informed they had not been informed of or provided with comments made at prior public hearings.

## 1991

John Van Hooser, Ultratech, commented that informing consumers about localized treatment verses fumigation has been the subject of discussion for many years and boils down to the question of cost. Local treatment is a lower cost than fumigation. Local treatment takes care of the visible infestations. Fumigations take care of infestations that cannot be seen. It does not make any difference which option is selected. He did not believe any consumers were going to opt to not locally treat based on the proposed amendment.

Ken Gordon commented that there are new detection devices available that look into walls, and availability of these devices should be taken into consideration.

Karen Graver, attorney representing Tallon Termite & Pest Control, Inc., commented that the proposed amendment of 1991(a)(8)(C) requiring a statement on recommendations that local treatment does not eradicate undetected infections in other areas of the structure is legally deficient and is contrary to public policy. If passed, this proposed amendment will be subject to legal challenge at great cost to the board. In order to avoid the cost of litigation, the board should reject the proposed amendment. The amendment is anti-consumer as it utilizes the consumer's fears about undetected pests to lead them to choose fumigation over localized treatment, at greater cost to the consumer. Fumigation is more costly to the consumer, yet the consumer is frightened into selecting this option over local treatment. The proposal is anti-competitive. One of the basic tenants of society is that we are to encourage competition and innovation. The board's vision statement states that the board wants to continue to improve technology in the rendering of structural pest control services. The way to improve the industry is to encourage innovation and competition, not to pass a proposed amendment that will favor an entrenched method of fumigation over innovative localized treatments. This proposal is unfair. The California Legislature has expressed a strong preference for performance based standards over prescriptive standards, preferring standards that measure results rather than those that dictate a certain method or action that must be taken by the professions. This proposal is a prescriptive standard, because it takes the decision making away from the professional by telling the professional to push fumigation rather than localized treatment. The California Legislature says the board is only empowered to pass prescriptive standards in circumstances where they are going to be more effective and less burdensome than other performance based standards. Since this proposal actually favors fumigation, it is a prescriptive standard and there is absolutely no evidence that it is going to be more effective and less burdensome than a performance-based standard. The board is only empowered to adopt reasonably necessary rules and regulations related to the practice of structural pest control per Business and Professions Code section

8525. There is no reasonably necessary reason for this amendment. The Initial Statement of Reasons states the purpose of this amendment is to inform consumers that local treatment is not the same as an all-encompassing method of treatment. Common sense tells the consumer that there is a difference between a local treatment and a whole structure treatment, so it is not necessary to tell the consumer something that is common sense. If the board is trying to educate the consumer, why is there not a correlating statement for fumigation that says fumigation is not the same as local treatment, and fumigation could result in over-treating at a cost and inconvenience to the consumer. This is an unfair regulation. The notice states there is no economic impact and no cost necessarily incurred by businesses in reasonably complying with the proposed action. Statements such as these under the Government Code must be based on facts, evidence, documents and testimony. The notice states there is no underlying data to support the action, so the board needs to look into this more and have further analysis to study whether this proposed amendment is something that should be done. The economic statement is false. There is adverse economic impact on local treatment providers because the customer is going to just want to get rid of all the bugs and they are going to opt for fumigation over local treatment and that is going to cost an economic impact on local treatment providers. The proposal is replete with bad policy and legal deficiencies and if passed the proposal will be challenged and it is doubtful the challenge will withstand judicial scrutiny.

Jim Steffenson, Tallon Termite & Pest Control, Inc., previous owner of his own registered company, agrees with the previous speaker regarding not leading the consumer to believe that fumigation is the only treatment method, and questioned why section 8619.5 makes reference to the event of a failed fumigation if fumigation is so effective. When a system does not work, it is the board's responsibility to make sure the company honors its guarantee. He questioned why full-house treatments are not recommended for subterranean termites, and why drywood termites are being singled out. Real estate transactions will be impacted by this proposal when a buyer sees two reports; one recommending fumigation and one recommending drill and treat. This problem already exists. If the company recommends a localized-treatment, and this statement is provided to the consumer, the consumer is going to insist on fumigation. He questioned whether a licensee must recommend fumigation because an infestation may be in the walls. He implored the board to not approve this proposal.

Robert Tallie, Hi Tech Termite Control, Inc., commented that his company uses microwaves and home-injections, and stated that the proposed statement in section 1991(a)(8)(c) seems to be blatant that any termite leading into an inaccessible area, if treated, will not treat the inaccessible area. There is no statement as if they are in there, there can be one kick-out in a door jam and that is leading into an inaccessible area, now we are saying that we are not killing termites that are not being notified if they are or are not there by just saying we are not killing them. There are methods that may be considered as secondary to consumers and operators but there are methods to treat those areas. To blatantly say they will not be eradicated is not right because there are methods to use to attempt to eradicate that have been proven successful through testing by Vernard Lewis and other companies that his

company has killed termites using alternative methods. That needs to be recognized because it is a part of the industry and consumers need to have that accessibility. It needs to be acknowledged even in going through an escrow transaction that there has been something done to these termites that are leading into these inaccessible areas, they are just not blatantly not being treated at all. There is a concern of warranty on these. There are areas that are considered to be under warranty. There are companies that will warranty these inaccessible areas so that if termites do swarm out and they are not killed they are guaranteed to come back and treat these areas. This is something else that should be addressed and not that they just not going to be treated and you are just out of luck if you go with this system in this way, that it can be covered underneath the warranty. There are also chemicals on the market that are able and produced to treat, foam injection and Prelude is one of them, Timbor is another, that is to treat these inaccessible areas by making such a statement as is proposed on the amendment would make those chemicals null and void then what should they do in respect as far as advertising their product to go against this verbiage that basically says anything that we do in these areas is not even being acknowledged.

Hanif Gulmahamad, Terminix, commented that the second paragraph of 1991(a)(9) is not clear. He suggested that the words "above ground" should go in front of "termite bait stations" for clarification. He stated that the comments made today on the proposed amendment to section 1991(a)(8)(C) have no basis in fact, reality or in science. Research by Dr. Atkinson shows that 70 percent of drywood termite work being done in Orange County and the Riverside area is local treatment. The proposal is just a clear simple disclosure informational statement to a customer. He commented that there are people here today who made comments about how educated the customers are about wood destroying pest and organisms, but his 26 years of experience in this industry tells him that is not so. Customers do not spend time researching wood destroying organisms, termites and cockroaches; this is really not a high priority with them. This board is a consumer advocacy board first and foremost and what this board should be doing here is protect the customer. This disclosure is not telling anybody that fumigation is better than local treatment, or borates or Timbor or all the other things he heard mentioned today. The proposal is a simple informational statement to consumers. He did not understand how people are so vehemently and strenuously opposed to this, questioning their vested interest in opposing the regulation.

Jim Boyer, Clark Pest Control, commented that his company does perform local applications, however, in his 44 years in the industry, it is still his belief that local treatment is misleading to the public. Consumers believe they are getting a service that they are not actually receiving. If a company is going to offer a local application, then consumers must be informed of exactly what they are receiving; not that a local application is better or worse, simply that it is a local application compared to an all-encompassing fumigation. Clark Pest Control supports this regulation amendment.

Dave Franklin commented that the proposed amendment to 1991(a)(8)(C) would create more confusion with the consumer. He commented that 1991(a)(13), which eliminates all

special treatments for wood decks, was included because wood decks are special circumstances and require some specific definition on how they are handled because decks were creating problems for consumers as well as operators. He has become accustomed to the language and would like to see it stay.

### 1993.2

Hanif Gulmahamad, Terminix, spoke in favor of the proposed regulation, stating it was a simple clarification for the consumer and a useful regulation.

Larry Musgrove, Western Exterminator, spoke in favor of this regulation, stating it is needed.

### 1993.3

Dave Franklin commented that it was a good proposal, but thought that above ground bait stations should be included as well.

There were no further public comments. Mr. Chang concluded the oral testimony portion of the regulatory hearing.

Mr. Trongo moved and Mr. Morris seconded to authorize staff to modify the proposed language of section 1991(a)(9), make the modifications available for a 15-day public comment period, and delegate authority to the registrar to adopt the proposed regulation amendment as follows, provided there are no adverse public comments:

#### § 1991. (a)(9)

For the extermination of subterranean termite infestations, treat an infested area under the structure when subterranean termite tubes are found connected to the ground or when active infestations are found in the ground. Subterranean termite tubes shall be removed where accessible, except for the use of where a licensee is using an above ground termite bait stations that requires the use of the termite tubes to be effective, in which case Where a licensee is using an above ground termite bait stations that requires the use of termite tubes to be effective subterranean termite tubes can remain in place for purposes of placement duration of the licensee's use of the termite bait stations. At the conclusion of treatment, the subterranean termite tubes shall be removed.

Passed unanimously.

Mr. Morris moved and Mr. Roth seconded to non-adopt the proposed amendment to section 1991(a)(8)(C), and refer language back to committee. Passed unanimously.

Mr. Traum moved and Mr. Thurmond seconded to adopt the proposed amendment to section 1991(a)(13) as follows:

~~(13) Restore any members of wooden decks, wooden stairs or wooden landings in exterior exposure to a condition where they are able to carry out their intended function. Recommendations for corrective measures will depend upon the extent of adverse exposure and existing degree of deterioration and may include any of the following:~~

~~(A) Refasten any wood members which are considered structurally functional but have become loose because of wood deterioration.~~

~~(B) Remove and/or replace structurally weakened portions of any wood member.~~

~~(C) Remove and replace all wood members if full function and safety cannot be restored by partial replacement and repair as in (B) above, remove and replace entire wood member.~~

Passed unanimously.

Mr. Traum moved and Mr. Morris seconded to non-adopt the proposed regulations sections 1993.2 and 1993.3, and refer the language back to staff. Passed unanimously.

Hanif Gulmahamad, Terminix, suggested section 1993.2 language referring to "termite bait station" should be amended to read "termite baiting system."

## **BOARD MEETING CALENDAR**

- Strategic Planning - November 26 & 27, 2001 – Harris Ranch, Coalinga
- Board meeting – January 17 & 18, 2002 – Monterey area

## **APPROVAL OF AUGUST 3, 2001 MINUTES**

Mr. Sesay moved and Ms. Melton seconded to approve the minutes of the meeting of August 3, 2001. Passed unanimously.

## **REGISTRAR'S REPORT**

Ms. Okuma announced that she and Mr. Trongo attended the Association of Structural Pest Control Regulatory Officials Conference in Florida. Mr. Trongo gave a report regarding the topics of the conference.

Ms. Okuma introduced staff members in attendance, Structural Pest Control Board Specialists Gregory Adams and Charles Alsky. Also in attendance was Johan Motakef, from the Anaheim office of the Department of Pesticide Regulations.

Mr. Patzer reported on the following:

- October 15, 2001, attended the San Diego Quarterly Commissioner's Pesticide Meeting
- September 6, 2001, attended the IPM Advisory Group Meeting
- September 13, 2001, spoke at the County Agricultural Symposium
- September 18, 2001, attended the Structural Pest Control Regulation Work Group Meeting
- September 18, 2001, spoke at San Diego PCOC District Meeting
- September 26, 2001, attended Disciplinary Review Committee Meeting
- Unregistered companies performing pigeon control has become a recent enforcement issue, resulting in the issuance of cease and desist orders.

Ms. Saylor reported on the following:

- New telephone system is in place with a six-month forwarding of all calls, followed by a six-month recording providing the new telephone numbers.
- The Governor signed AB 446, which eliminates the Wood Roof Cleaning and Treatment license category.

Mr. Roth commended staff for doing such a fine job as reflected in the survey results.

Ms. Okuma reported on the following:

- AB 192 makes changes relative to conducting open meetings.
- Attended public hearing on Assembly Bill 269, related to hiring of executive officers, and establishing a Department of Consumer Affairs Enforcement Coordinator.
- Submitted proposed legislative amendments to the Department to be included in the Omnibus Bill.
- Staff is working on the contract development for the Forest Products Laboratory.
- Fee Restructure committee meeting was canceled due to September 11, 2001, tragedy, and is rescheduled for early November.
- Staff has been working with the Department of Pesticide Regulations to try and reestablish the liaison position.

## **PROPOSED LEGISLATIVE AMENDMENT – CRITERIA FOR COUNTY AGRICULTURAL COMMISSIONER TO ASSESS CITATIONS AND FINES TO LICENSED INDIVIDUALS**

Mr. Patzer reported that the Pesticide Regulation Work Group has developed proposed legislation that would 1) require notification to an employer of the violation or proposed actions against its employees, 2) provide for citing both employers and licensed employees for repeat violations, 3) provide discretion to cite employees for violations of pesticide laws



and regulations, and 4) provide an alternative penalty such as continuing education in lieu of a fine. Staff of the Board is currently reviewing the proposed legislation.

### **RECOMMENDATION FROM BILL GILLESPIE, RESEARCH ENDEAVORS CO., THAT BOARD MEMBERS (RATHER THAN STAFF) APPROVE CONTINUING EDUCATION COURSES**

Mr. Gillespie spoke regarding no standards set in approving continuing education courses and the need for uniformity when approving continuing education courses. He recommended the board itself or a licensed professional individual should review the courses.

Mr. Trongo suggested this item be considered at the Strategic Planning meeting.

### **INSPECTION REPORT COMMITTEE REPORT/ RECOMMENDATIONS**

Larry Musgrove, Chairman, reported that the Inspection Report committee had met on October 3, 2001, and proposed revisions to the Wood Destroying Pests and Organisms Inspection Report form and the Notice of Work Completed and Not Completed form.

Ms. Melton moved and Mr. Roth seconded to notice for public hearing revisions to the Wood Destroying Pests and Organisms Inspection report. Passed unanimously.

Mr. Roth moved and Mr. Morris seconded to include in the proposed amendment the phrase "&/or Party of Interest." Passed unanimously.

### **CUSTOMER NOTIFICATION COMMITTEE REPORT/RECOMMENDATIONS**

Dave Franklin, Chairman, submitted the following proposed language recommended by the committee in response to the requirements of Business and Professions Code Section 138:

Every licensee shall provide notice to the licensees' clients or customers of the fact that he/she is licensed by the Structural Pest Control Board. Notice shall be provided by, but not limited to, any of the following methods:

- 1) Verbally at the time that services are required.
- 2) Company Business card identifying person as a licensee of the Structural Pest Control Board
- 3) Structural Pest Control Board license number printed on Wood Destroying Pest and/or Organisms Inspection Report form.

NOTE: Authority cited: Section 8525, Business and Professions Code.

Reference: Sections 138, 680, Business and Professions Code.

Ms. Melton moved and Mr. Sesay seconded to notice the proposed language for public hearing. Passed unanimously.

## **ANNUAL REVIEW OF PROCEDURES**

There were no recommended changes to current procedures.

Ms. Okuma informed the Board that the Department of Consumer Affairs is currently reviewing its complaint disclosure policy. Once finalized, the revised policy will be submitted to the Board for consideration to modify its current procedure.

## **APPLICATOR EXAMINATION PROGRAM – PROPOSAL TO IMPLEMENT COMPUTER BASED TESTING**

Ms. Okuma recommended the Board consider computer based testing for the applicator license examination program, indicating the cost to the applicant would increase and examination applications would have to be submitted in advance of an examination date. The Board requested that a firm cost to the applicant be provided, and time to process applications be outlined and addressed at next board meeting.

## **PUBLIC COMMENTS FOR ITEMS NOT ON THE AGENDA**

Ken Gordon, Gordon Termite Control, commented that on May 10, 2001, he attended the International Symposium of Formosan Subterranean Termites. His concern is that the Formosan termite has been transferred to California via railroad ties from Louisiana.

Larry Musgrove, Chairman of the Inspection Report Form Committee, commented that the motion to notice for public hearing amendments to the Wood Destroying Pests and Organisms Inspection Report form did not include amendments to the Notice of Work Completed and Not Completed (Completion Notice) form. He asked that the board notice for public hearing amendments to the Completion Notice.

Mr. Sesay moved and Mr. Thurmond seconded to notice for public hearing amendments to the Completion Notice as recommended by the Inspection Report Committee. Passed unanimously.

James Sutton, Accurate Termite, commented that home inspectors are impacting the structural pest control industry when making recommendations that a pest control inspector be contacted for items not covered under a structural pest control inspection. He suggested that perhaps the board address the realtor associations regarding home inspections.

Harvey Logan, Pest Control Operators of California, asked when applicators might have to have continuing education hours.

Mr. Trongo adjourned the meeting at 1:20 PM.

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KEN TRONGO, President

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KELLI OKUMA, Registrar

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Date